

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 54 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPESH L MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioners

MR KT DAVE, A.P.P. FOR Respondents Nos. 1 & 3

MR YS LAKHANI for Respondent No.2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 09/07/98

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.P.P. Shri K.T. Dave for respondents Nos. 1 and 3 whereas Shri Gondaliya waives service of rule for Respondent No. 2. With consent of the learned advocates, this application is finally heard today.

2. This is an application with a prayer that the order passed by the learned Chief Judicial Magistrate,

Jamnagar on complaint lodged by respondent No.2 which has been registered as Criminal M. Case No. 104/97 be quashed and set aside and consequential proceedings resulting from the said complaint being M. Case No. 5/97 pending with Jamnagar City 'B' Division Police Station be also quashed and set aside. Learned Advocate Shri Saurin Shah appearing for the petitioners has fairly submitted that he is not praying for quashing the complaint qua all the accused but he wants the complaint to be quashed qua the present petitioners only.

3. Ld. Advocate Shri Saurin Shah has drawn my attention to the order passed in Special Criminal Applications Nos. 1159 to 1162 of 1996 by this court on 2.11.1996. It has been submitted by him that in the said special criminal applications complaints filed by four different persons against the present petitioners which were practically similar in nature had been quashed by this court. He has submitted that facts in the instant case as alleged against the present petitioners and facts alleged against the petitioners in the complaints which were subject-matter of Special Criminal Applications Nos. 1159 to 1162 of 1996 are similar. The said fact could not be disputed by learned A.P.P. Shri K.T. Dave and learned advocate Shri Gondaliya appearing for respondent No. 2.

4. In the complaint filed against the present petitioners by respondent No. 2, it has been mainly alleged that the complainant wanted to sell some of his shares and therefore he had approached Shri Anil Bhogilal Mehta who is accused No.1 in the criminal case which is subject-matter of the present application. It has been stated in the complaint that Shri Anil Mehta, accused No.1, had taken delivery of the shares which were to be sold and had also given a cheque for Rs. 62,500/-. It has been alleged in the complaint that the accused had committed offence under provisions of sections 406, 409, 420 and 114 of the I.P.C. It has been alleged in the complaint that the present petitioners who are accused Nos. 2 and 3 were acting as principals of Anil Mehta and Anil Mehta had forwarded the share certificates received from the complainant to the present petitioners.

5. As stated hereinabove, against the present petitioners and Shri Anil Mehta, similar complaints were filed by different complainants and the said complaints were also challenged before this court in Special Criminal Applications Nos. 1159 to 1162 of 1996. A copy of the common judgment delivered in the said cases is annexed and marked Annexure-E to this application. Upon

perusal of the complaints, it has been held in those cases that no case was made out against the present petitioners under provisions of sections 406, 409, 420 and 114 of the I.P.C. as there was no entrustment of the share certificates to the present petitioners. Moreover, there was no representation made by the present petitioners to the complainants in those cases. Similarly, here also no representation has been made by the present petitioners to the complainant and there was no entrustment of share certificates to the present petitioners by the present complainant, that is, respondent No.2 herein. As facts stated in the complaints which were subject-matter of the said petitions and facts stated in the present complaint are absolutely similar except for the difference in the names of complainants, I do not see any reason to come to a different conclusion even in this case.

6. In the circumstances, as no case has been made out against the present petitioners by respondent No.2 complainant with regard to delivery of the share certificates or entrustment of the share certificates on the representation made by the petitioners, there is no question of commission of any offence of any misappropriation of sale proceeds or criminal breach of trust and, therefore, the present complaint is quashed against the present petitioners under provisions of sec. 482 of the Criminal Procedure Code. Needless to say that the proceedings against other accused shall continue.

Rule is accordingly made absolute.

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